



LATEST NEWS

A 6-year-old died in a Lexington neighborhood pool. A legal battle tries to sort out how.

BY GREG KOCHER

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What began as a picture-perfect Saturday outing between grandfather and grandson ended in tragedy nearly a year ago.

After eating at a Cheddar's restaurant, Lawrence Stewart and his 6-year-old grandson, Michael, practiced hitting a few baseballs before going to the Pinnacle neighborhood pool on Lexington's Southpoint Drive.

There, Michael died in about 3 ½ feet of water as his horrified grandfather watched.

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Were the grandfather, the company that supervised lifeguards, the neighborhood association or its property management company at fault? Whatever the answer, the blame is flying as a lawsuit and counterclaims make their way through Fayette Circuit Court.

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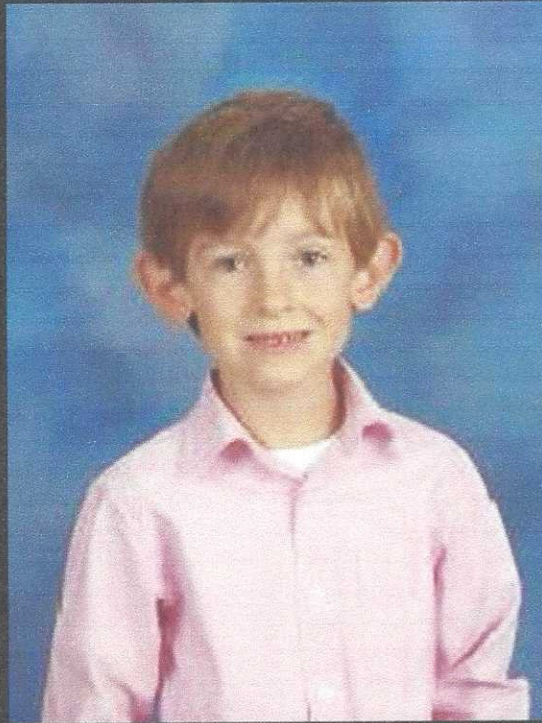
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In March, Michael's mother, Alexandria Stewart, sued the Pinnacle Homeowners Association and others in connection with her son's Aug. 26, 2017, death.

The boy, a first-grader at Veterans Park Elementary, was found unconscious in the shallow end of the pool. Pinnacle is one of about 10 neighborhood pools in Lexington that are operated through homeowners associations and that are not owned or operated by the city.

"Anyone who has a child that swims in a pool would be appalled that a 6-year-old — that is one of only six or seven people in a pool, on a very slow late afternoon, with a lifeguard sitting 10 or 15 feet away — would have drowned," said Ann Oldfather, the Louisville attorney representing Alexandria Stewart.

Nathan Billings, co-counsel for Pinnacle Homeowners Association, had no comment on the pending litigation. Residents of the large neighborhood near Tates Creek Road and Man o' War Boulevard get pool passes when they pay their annual dues to the homeowners association.



Veterans Park Elementary School Principal Molly Dabney shared memories about first-grader Michael Stewart, who drowned last August.

By Greg Kocher ✉

The mother's suit claims that two lifeguards didn't take immediate action to pull Michael from the water when it became apparent he was in distress. (The homeowners association had a contract with Lexington Pools LLC to provide lifeguards. The lifeguards in this incident are not being sued.)

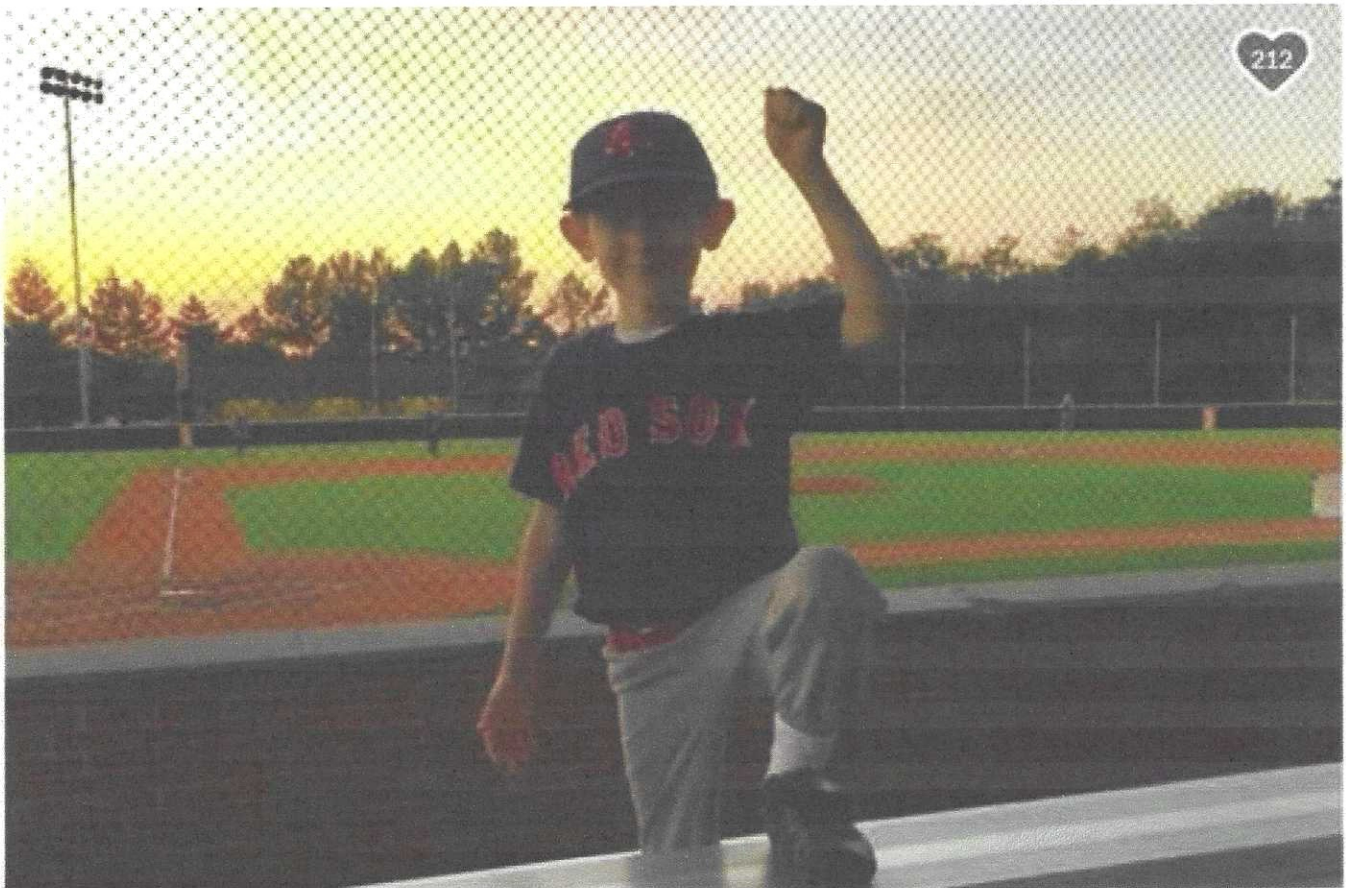
Benny C. Epling, the lawyer for Lexington Pools, said he looks forward to defending his client, who denies "any culpability in this tragedy."

Gerry Dworkin, an aquatics safety expert, says protocols call for lifeguards to be able to recognize an incident within 10 seconds and to intervene within 20 seconds. And he says there shouldn't be any difference between lifeguards at a municipal pool and those at a homeowners association pool, such as the one at Pinnacle.

The mother's suit also claims that negligence on the part of All Points Community Management was a factor in the boy's death. All Points is a property management company that provides various administrative services for some Lexington

homeowners associations, including several in the Andover area. A lawyer for All Points declined comment.

But the primary acts of alleged negligence “are in connection with the training that was provided by Lexington Pools to its lifeguard staff – their actual lack of training in proper surveillance techniques, and their lack of training in dealing with emergencies, particularly prompt rescue and resuscitation,” Oldfather said.



Michael Stewart Memorial Fund

A gofundme campaign raised money for a memorial fund for Michael Stewart after he died after playing in a Lexington pool last summer.

Michael Stewart Memorial Fund

The Pinnacle Homeowners Association and All Points Community Management later sued the maternal grandfather, Lawrence Stewart. The homeowners association and management company claim the grandfather, “who had been

entrusted with Michael's care and supervision by Michael's mother," was negligent in his oversight of the boy. An attorney for Lawrence Stewart has not yet filed a response to the allegations.

The lawsuit doesn't specify the alleged negligence other than to say that the grandfather "failed to exercise that degree of care and supervision expected of an ordinarily prudent adult while caring for and supervising a child...." The complaints don't specify the dollar amounts sought.

A coroner's report and police records give a more detailed account of the events leading up to the discovery of an unresponsive Michael in the pool.

The grandfather, in an interview with a police detective and a deputy coroner, said that he and Michael had eaten at Cheddar's and had practiced hitting baseballs earlier in the day before going to the pool at about 6 p.m.

The Pinnacle pool, one of more than 300 pools inspected at least twice a year by the Lexington-Fayette County Health Department, is across the street from where Michael and his mother lived.

Michael, who was just over 4 feet tall, was "chest high" in the shallow end, playing in water of about 3 1/2 to 4 feet deep, according to police and coroner's reports. He wasn't wearing or using a flotation device. The grandfather didn't get in the water but watched from the pool deck.

The coroner's report said the grandfather saw "Michael dipping his head in the water and then observed him floating face down in the pool." The grandfather "thought Michael was goofing off in the water" and started recording him so he could send the 35 seconds of video footage to Michael's mother.

The boy started sinking but the grandfather thought the boy was playing in the water, according to the documents. Stewart then realized something was wrong and asked a man to help Michael.

The man helped get the boy out of the water, according to the police and coroner's reports. A woman who is a nurse performed CPR on Michael, but she told police she never detected a pulse. Police dispatch received a call at 6:50 p.m.

“CPR was initiated and performed by bystanders and a lifeguard,” The coroner’s report said. Officer Lawrence Saval, one of the first patrol officers on the scene, wrote in his report that when he arrived “I found a lady performing CPR. ...I joined in to assist in the CPR.”



Entrance to the Pinnacle clubhouse and pool, 621 Southpoint Drive in Lexington.

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One lifeguard told police that at the time of the incident, he was in the doorway of the pool house near the cashier while the other lifeguard was in an elevated chair. That lifeguard had been in the chair for about 15 minutes before the incident occurred, a police report said; the two lifeguards would take turns in the chair every 25 minutes.

Michael was taken by a Lexington Fire Department ambulance crew to the pediatric emergency department at University of Kentucky Chandler Hospital, where resuscitation efforts continued until he was pronounced dead just before 7:30 p.m.

Alexandria Stewart did a bedside interview in Michael's emergency department room. The mother told the detective and deputy coroner that Michael was supposed to go only to a "splash pad" water feature and not into the pool.

The mother "said that Michael was never to get into the swimming pool without an adult in the pool with him," the coroner's report said. Michael had taken swimming lessons the previous year but his mother said he couldn't swim. The mother said Michael was healthy, had no medical issues and was not on any medications.

No autopsy was ordered because people had seen the incident and there was no foul play, the coroner's report said.

The homeowners association said the Stewarts had signed a pool-pass application that said they, as members and guests of the pool, would hold the association harmless from any type of claim, such as the wrongful death suit filed by the mother.

To further complicate matters, there is some dispute among the parties about whether drowning was the cause of death.

In her report and the death certificate, Deputy Coroner Claire Dixon-Conder identified drowning as the immediate cause of Michael's death.

Nevertheless, Lexington Pools LLC says the coroner's report "does not conclusively establish" that Michael died as a result of drowning.

To explore that claim, Lexington Pools LLC sought and received medical records to determine whether Michael had some pre-existing health condition.

"He was a healthy 6-year-old boy. There was nothing wrong with him," Oldfather said.

lifeguards are trained and are supposed to recognize emergencies, such as a swimmer in distress, and take quick action, such as removing a swimmer from the pool and rendering first aid and CPR, said Michael R. Hasken, another attorney representing Alexandria Stewart.

“These duties are in no way altered or modified because the swimmer in distress suffered an acute injury (such as a heart attack or seizure) while swimming in the pool,” Hasken wrote.

Dworkin, the expert in aquatic safety and water rescue, said the certification, training and operations of lifeguards should be the same at a private pool like Pinnacle or a public pool.

But just because a lifeguard is certified doesn’t mean a lifeguard is qualified to work at a particular pool until he or she has received site-specific training, said Dworkin, owner of Lifesaving Resources LLC, a consulting company in Maine.

A lifeguard should know how to use the specific safety and rescue equipment at a particular facility, and should know the specific rules and regulations at that particular pool.

Inadequate lifeguard training was among many factors that led to the 2014 drowning death of a 13-year-old boy at the Transylvania University pool, Dworkin concluded in a report that was filed as part of litigation in that case.

A video recording of the Transylvania drowning indicated the boy, a participant in a summer camp, was in distress for more than a minute, and during that time one lifeguard remained in an elevated chair while another sat at a desk working on a laptop computer, Dworkin’s report said. The Transylvania case was settled out of court.

“There are surveillance and operational protocols that call for lifeguards to be able to recognize an incident within 10 seconds and to intervene within 20 seconds,” Dworkin said.

In the Stewart case, it’s unclear from public documents how much time elapsed from when Michael Stewart was observed to be in distress until resuscitative efforts began. Oldfather said she is still trying to pin down the timeline.

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